



CODE OF CIVIL PROCEDURE - CCP

PART 2. OF CIVIL ACTIONS [307 - 1062.20] (*Part 2 enacted 1872.*)

TITLE 8. OF THE TRIAL AND JUDGMENT IN CIVIL ACTIONS [577 - 674] (*Title 8 enacted 1872.*)

CHAPTER 6. Of References and Trials by Referees [638 - 645.2] (*Chapter 6 enacted 1872.*)

638. A referee may be appointed upon the agreement of the parties filed with the clerk, or judge, or entered in the minutes, or upon the motion of a party to a written contract or lease that provides that any controversy arising therefrom shall be heard by a referee if the court finds a reference agreement exists between the parties:

(a) To hear and determine any or all of the issues in an action or proceeding, whether of fact or of law, and to report a statement of decision.

(b) To ascertain a fact necessary to enable the court to determine an action or proceeding.

(c) In any matter in which a referee is appointed pursuant to this section, a copy of the order shall be forwarded to the office of the presiding judge. The Judicial Council shall, by rule, collect information on the use of these referees. The Judicial Council shall also collect information on fees paid by the parties for the use of referees to the extent that information regarding those fees is reported to the court. The Judicial Council shall report thereon to the Legislature by July 1, 2003. This subdivision shall become inoperative on January 1, 2004.

(Amended by Stats. 2002, Ch. 1008, Sec. 4. Effective January 1, 2003.)



CODE OF CIVIL PROCEDURE - CCP

PART 2. OF CIVIL ACTIONS [307 - 1062.20] (*Part 2 enacted 1872.*)

TITLE 8. OF THE TRIAL AND JUDGMENT IN CIVIL ACTIONS [577 - 674] (*Title 8 enacted 1872.*)

CHAPTER 6. Of References and Trials by Referees [638 - 645.2] (*Chapter 6 enacted 1872.*)

- 639.** (a) When the parties do not consent, the court may, upon the written motion of any party, or of its own motion, appoint a referee in the following cases pursuant to the provisions of subdivision (b) of Section 640:
- (1) When the trial of an issue of fact requires the examination of a long account on either side; in which case the referees may be directed to hear and decide the whole issue, or report upon any specific question of fact involved therein.
 - (2) When the taking of an account is necessary for the information of the court before judgment, or for carrying a judgment or order into effect.
 - (3) When a question of fact, other than upon the pleadings, arises upon motion or otherwise, in any stage of the action.
 - (4) When it is necessary for the information of the court in a special proceeding.
 - (5) When the court in any pending action determines that it is necessary for the court to appoint a referee to hear and determine any and all discovery motions and disputes relevant to discovery in the action and to report findings and make a recommendation thereon.
- (b) In a discovery matter, a motion to disqualify an appointed referee pursuant to Section 170.6 shall be made to the court by a party either:
- (A) Within 10 days after notice of the appointment, or if the party has not yet appeared in the action, a motion shall be made within 10 days after the appearance, if a discovery referee has been appointed for all discovery purposes.
 - (B) At least five days before the date set for hearing, if the referee assigned is known at least 10 days before the date set for hearing and the discovery referee has been assigned only for limited discovery purposes.
- (c) When a referee is appointed pursuant to paragraph (5) of subdivision (a), the order shall indicate whether the referee is being appointed for all discovery purposes in the action.
- (d) All appointments of referees pursuant to this section shall be by written order and shall include the following:
- (1) When the referee is appointed pursuant to paragraph (1), (2), (3), or (4) of subdivision (a), a statement of the reason the referee is being appointed.
 - (2) When the referee is appointed pursuant to paragraph (5) of subdivision (a), the exceptional circumstances requiring the reference, which must be specific to the circumstances of the particular case.
 - (3) The subject matter or matters included in the reference.
 - (4) The name, business address, and telephone number of the referee.

(5) The maximum hourly rate the referee may charge and, at the request of any party, the maximum number of hours for which the referee may charge. Upon the written application of any party or the referee, the court may, for good cause shown, modify the maximum number of hours subject to any findings as set forth in paragraph (6).

(6) (A) Either a finding that no party has established an economic inability to pay a pro rata share of the referee's fee or a finding that one or more parties has established an economic inability to pay a pro rata share of the referee's fees and that another party has agreed voluntarily to pay that additional share of the referee's fee. A court shall not appoint a referee at a cost to the parties if neither of these findings is made.

(B) In determining whether a party has established an inability to pay the referee's fees under subparagraph (A), the court shall consider only the ability of the party, not the party's counsel, to pay these fees. If a party is proceeding in forma pauperis, the party shall be deemed by the court to have an economic inability to pay the referee's fees. However, a determination of economic inability to pay the fees shall not be limited to parties that proceed in forma pauperis. For those parties who are not proceeding in forma pauperis, the court, in determining whether a party has established an inability to pay the fees, shall consider, among other things, the estimated cost of the referral and the impact of the proposed fees on the party's ability to proceed with the litigation.

(e) In any matter in which a referee is appointed pursuant to paragraph (5) of subdivision (a), a copy of the order appointing the referee shall be forwarded to the office of the presiding judge of the court. The Judicial Council shall, by rule, collect information on the use of these references and the reference fees charged to litigants, and shall report thereon to the Legislature by July 1, 2003. This subdivision shall become inoperative on January 1, 2004.

(Amended by Stats. 2001, Ch. 362, Sec. 1. Effective January 1, 2002.)